Filed 10/6/04 Robert H. v. Superior Court CA1/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

ROBERT H., **Petitioner,** **v.** **THE SUPERIOR COURT OF CONTRA COSTA COUNTY,** **Respondent;** **CONTRA COSTA COUNTY BUREAU OF CHILDREN AND FAMILY SERVICES,** **Real Party in Interest.**	**A107267** **(Contra Costa County Super. Ct. Nos. J03-01856, J03-01857)**

Damien H. (born September 2000) and Alyssa H. (born August 2001) were made dependents of the Contra Costa County Juvenile Court in January 2004. (Welf. & Inst. Code,[1] § 300.) Pursuant to rule 39.1B of the California Rules of Court,[2] their father, petitioner Robert H., has filed petitions for extraordinary writ seeking review of orders terminating reunification services and setting an October 20, 2004 hearing to select and implement a permanent plan under section 366.26 (hereafter .26 hearing). He contends

1 All undesignated section references are to the Welfare and Institutions Code.

2 All further rule references are to the California Rules of Court.

there is insufficient evidence to support the court's finding that reasonable reunification services were provided and the court erred in terminating reunification.

BACKGROUND

In October 2003, the minors were detained and section 300 petitions were filed under subdivision (b) alleging petitioner was unable to provide regular care for them. The petitions alleged that petitioner had a serious and chronic substance abuse problem, failed to provide an adequate home, food, hygiene and basic medical care for the minors, had been in a serious domestic violence relationship with the minors' mother and violated a current restraining order, and had a very violent criminal history requiring him to register as a violent felon. At the detention hearing the court ordered the minors' continued detention.

In January 2004, the section 300, subdivision (b) petitions were amended by agreement to solely allege that petitioner and the minors' mother had failed to provide adequate housing and care for the minors on a consistent basis, and had engaged in acts of domestic violence. Petitioner pled no contest to the amended petitions that were thereafter sustained.

The January 29, 2004 dispositional report by the Contra Costa County Bureau of Children and Family Services (Bureau) stated that petitioner was homeless. At the time of the social worker's October 2003 visit, petitioner was living with the minors in a trailer that was dirty, dangerous and had insufficient food. The minors were dirty and unkempt, and appeared depressed, pale and lethargic. Damien's speech was delayed and there was no record of the minors receiving any immunizations or medical care. Petitioner did not appear to be in good health. The report noted that petitioner was currently in custody for a probation violation and could potentially be in custody up to 90 days. Petitioner denied a current substance abuse problem and said he was willing to undergo drug testing, counseling and anger management classes. Petitioner was receiving weekly, supervised, hour-long visitation, which was reportedly going well. Petitioner's reunification plan required that he meet at least monthly with the social worker, complete regularly scheduled visits with the minors as arranged by the social worker, clear up all outstanding

warrants, obey all laws and conditions of probation/parole, demonstrate the ability to maintain a clean, healthy and safe home for six months, demonstrate the ability to provide food for the minors, and demonstrate the ability to keep the minors' clothing clean. Petitioner was also required to complete a domestic violence counseling program, individual counseling, and a parenting education class, and to successfully participate in random drug and alcohol testing for six months. The court adopted the Bureau's recommendations at the March 2004 dispositional hearing.

The Bureau's June 10, 2004 six-month status review report noted that petitioner had had seven visits with the minors since they were detained, with the last visit on March 19, when the social worker took the minors to see petitioner in jail at the Marsh Creek Detention Facility. On April 20, Bureau social worker Shirley Michael, wrote to petitioner informing him she was the new social worker. Petitioner contacted Michael on May 24, stated he had just gotten her letter on May 22, and requested visitation. He told Michael he had been arrested on May 22 on an "old warrant" and was to be released on May 24. Bureau records indicated that petitioner had not completed any drug testing or participated in any aspect of his reunification plan. Petitioner started an anger management class but was returned to jail on a probation violation, and showed no proof of attendance. The Bureau recommended termination of reunification services and setting of a .26 hearing.

Six-Month Review Hearing

At the July 6 and 7, 2004 contested six-month review hearing, Bureau social worker Debra Bidwell testified that she was working with petitioner between October 2003 and March 2004. Several times she discussed with petitioner what he needed to complete to achieve reunification. Social worker Michael testified that prior to going into custody on January 27, 2004, his visits with the minors were "sporadic." Bidwell said she instructed him to complete the Deuce Program while in jail and to begin his programs of parenting, anger management and substance abuse treatment. Bidwell told petitioner that further programs would be required upon his release and referred him to outside parenting and domestic violence programs to begin upon his release. Petitioner told

Bidwell he had worked out an agreement with the jail to undergo drug testing while in custody. Bidwell set up post-release drug testing for petitioner and instructed him to start drug testing upon his release from jail. Bidwell received documentation that he completed phase one of the Deuce Program, but never received any documentation that he completed the remainder of that program. Petitioner wrote to Bidwell almost daily while in custody asking about his case plan and expressing a desire to cooperate and complete his plans. A February 24, 2004 letter contained an address where petitioner could be reached upon his release from custody. The letters were placed in a file that Michael was given. Bidwell was able to arrange only one visit with the minors while petitioner was in custody. The visit went well—the minors were happy to see him and he acted appropriately. While incarcerated, petitioner appeared to be making a sincere effort at reunification.

Bidwell said on or about April 7, 2004, the day he was released from jail, she received several voicemail messages from petitioner requesting visitation. Petitioner left his phone number and new address (different from that in his February letter) on her answering machine. She returned his call and left him the name and phone number of his new social worker, Michael. She made a note of petitioner's new address on a note which she passed on to Michael. However, petitioner did not return Bidwell's call for a couple of weeks. When Bidwell finally talked with petitioner she informed him that Michael was his new social worker and directed him to start drug testing at the East County Detox. Bidwell said that in order for petitioner to arrange visitation with the minors he was to call Michael or "Aspira," which had previously supervised his visits. Petitioner had previously been given Aspira's telephone number.

Michael testified she was assigned this case on April 2, 2004, and received the file several days later. She received no documentation of petitioner's completion of the Deuce Program. On April 20, she sent petitioner a letter asking him to contact her and was unaware that he had previously provided a different address to Bidwell. On May 1, petitioner left Michael a phone message requesting visitation, which she returned that day, leaving a message. She left another message for petitioner on May 10 asking him to

call her and got no return call. She first spoke to petitioner and learned of his new address when he called her on May 24 to say he had been incarcerated since May 22, hoped to be released that day (May 24) and asked to visit the minors. He said he did not receive her April 20 letter until May 22. Michael gave him the information he needed regarding visitation. She also informed him of the date and purpose of the June 10 six-month status review hearing, discussed his compliance with his case plan and explained what she had said in the six-month status report. Petitioner was released from custody on May 24. Michael sent petitioner a copy of the six-month review report on approximately June 2. Petitioner failed to appear at the June 10 hearing. Michael next talked to petitioner on June 20, after he received the Bureau's six-month status review report. Petitioner was very upset about its recommendation. They discussed the report and his compliance with his case plan. Michael said that after receiving the case, she did check the file to make sure that anger management and parenting class referrals had been made. In total, petitioner was given four referrals for drug testing between October 2003 and February 2004. Petitioner never indicated that he had completed any of the programs in his case plan and never made himself available to talk to Michael in person. Bidwell told Michael that she had no recollection of receiving any documentation regarding petitioner's participation in the Deuce program or a parenting class certificate.

Michael said between June 1, 2004 and the July 6 hearing date, petitioner had one visit with the minors on June 28. She explained that visits are conducted through Aspira and that petitioner needs to call to arrange the visits. She said that had been the procedure "all along" and that she reminded petitioner of this when she spoke with him on May 24. On June 20, Michael got a call from Aspira asking her to approve a visit, which she did. The June 28 visit was the only visit that petitioner attempted to arrange.

Petitioner testified he sent Bidwell his certificate of completion of the first two phases of the Deuce program, and was released from custody on April 7, 2004, prior to his completion of phase three. He said he also sent defense counsel a copy of his phase one completion. Petitioner said he also completed the jail anger management and parenting classes and communicated this to Bidwell. On cross-examination he conceded

that in December 2003 he failed to show up for two visits with the minors. He also said that for the past week he was living in his pastor's garage, and before that was "on the streets."

At the conclusion of the hearing the court found that petitioner had completed only one portion of the Deuce Program, and had done no counseling or drug testing and failed to return the social worker's call upon his release from jail. Moreover, since his release he had had only one visit with the minors. The court further found that petitioner still had no appropriate place to live with the minors. The court also found that the Bureau had offered or provided reasonable reunification services, and that petitioner had not regularly participated or made more than very minimal progress toward meeting the objectives of his reunification plan. The court ordered reunification services terminated and set a .26 hearing for October 20, 2004.

DISCUSSION

I. *Reasonable Reunification Services Were Offered or Provided*

Petitioner contends there is insufficient evidence that reasonable reunification services efforts were tailored to his needs or provided to him.

"A finding that reasonable reunification services have been provided must be made upon clear and convincing evidence. [Citation.]" (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 971.) We review such finding for substantial evidence. (*Ibid.*; *Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) In doing so, we view the evidence in the light most favorable to the judgment, and if the juvenile court's finding is supported by substantial evidence, it cannot be disturbed. (*Angela S.*, at p. 762; *In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) Reunification services should be tailored to the specific needs of a particular family. (*Alvin R.*, at p. 972.) "Services will be found reasonable if the [Bureau] has 'identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult . . . .' [Citation.]" (*Id.* at pp. 972-

973.) The test is not whether the services provided were the best that might be provided, but whether they were reasonable under the circumstances. (*Misako R.*, at p. 547.)

As to incarcerated parents, section 361.5, subdivision (e)(1) provides: "[T]he court shall order reasonable [reunification] services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child . . . . Services may include, but shall not be limited to, all of the following: [¶] (A) Maintaining contact between the parent and child through collect telephone calls. [¶] (B) Transportation services, where appropriate. [¶] (C) Visitation services, where appropriate. [¶] . . . [¶] An incarcerated parent may be required to attend counseling, parenting classes, or vocation training programs as part of the service plan if these programs are available."

A. *Reasonable Contact*

Petitioner argues that the Bureau social workers did not maintain reasonable contact with him. In particular, he asserts that social worker Bidwell did not update his case file so that Bureau personnel would be aware of his new address, and, thereafter, the Bureau sent him correspondence regarding his new social worker (Michael) at an incorrect address. In addition, he asserts that Michael had two telephone conversations with him, those conversations did not include a discussion of his case plan or new referrals for completion of his plan, and her letters were sent to an address the Bureau knew was incorrect. We conclude that substantial evidence supports the court's implied finding that the Bureau maintained reasonable contact with petitioner. Regardless of whether petitioner's case file was properly updated, Michael did have a proper phone number for petitioner and left several messages for him between May 1 and May 24, 2004. When she finally spoke with him on May 24, she discussed arranging visitation, and informed him of the date and purpose of the six-month status review hearing, at which he failed to appear. Any error in Michael's sending petitioner correspondence at an incorrect address informing him that she was his new social worker was ameliorated by Bidwell's telephone message to petitioner on approximately April 7, informing him of Michael and Michael's telephone number. In addition, since Michael first learned of petitioner's new address on May 24, we presume that the correspondence sent to

petitioner on or about June 2 was properly addressed and timely received. Finally, Michael testified she did discuss petitioner's compliance with his case plan in their May 24 telephone conversation regarding her status review report.

B. *Assistance in Complying with Case Plan*

For the first time, petitioner asserts that the Bureau did not provide him with any assistance in finding housing, although the section 300 petitions were sustained in part due to his failure to provide adequate housing for the minors. The Bureau's opposition to the rule 39.1B petition does not address this contention. Petitioner's reunification plan required that he demonstrate the ability to maintain a clean, healthy and safe home for six months. The record does not establish that any referrals or other assistance was offered to meet this reunification goal However, at all times petitioner was represented by counsel, who could have alerted the juvenile court that the Bureau had done nothing to assist him in locating housing. The record before us does not reveal that either petitioner or his counsel ever complained to the Bureau or the court about the lack of efforts to assist him with housing. " ' " 'The law casts upon the party the duty of looking after his legal rights and of calling the judge's attention to any infringement of them. If any other rule were to obtain, the party would in most cases be careful to be silent as to his objections until it would be too late to obviate them, and the result would be that few judgments would stand the test of an appeal.' [Citations.]" ' [Citation.]" (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1365, fn. 6.) Moreover, generally, an issue not raised in the juvenile court may not be raised for the first time on appeal or in a writ. (Seiser & Kumli, Cal. Juvenile Courts Practice and Procedure (2004 ed.) § 2.192, pp. 2-343 to 2-344; accord, *In re Dakota S.* (2000) 85 Cal.App.4th 494, 501-502.)

C. *Visitation*

Petitioner asserts that the single visit arranged by the Bureau while he was in custody was not sufficient to fulfill the Bureau's duty to provide reasonable visitation services. If a prison allows visitation and is not excessively distant, the reunification services provided must include ongoing visitation between the incarcerated parent and the minor child(ren). (*In re Jonathan M.* (1997) 53 Cal.App.4th 1234, 1237-1238,

disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 408 & fn. 5; *In re Brittany S.* (1993) 17 Cal.App.4th 1399, 1407.)

Here, social worker Bidwell testified that she was only able to arrange one visit with the minors while petitioner was in custody. Reviewing this evidence in the light most favorable to the court's order, we infer that Bidwell attempted to arrange more than one visit while petitioner was in custody, but, for reasons beyond her control, was unable to do so. We conclude, therefore, petitioner has failed to demonstrate that the Bureau failed to provide reasonable visitation services.

II. *Petitioner Has Made Little Progress Toward Reunification*

Finally, petitioner appears to contend that the juvenile court did not give due consideration to the progress he made toward family preservation or his expressed desire to continue his relationship with the minors. He argues that while incarcerated, he completed several drug tests, a computer class, a parenting class, received a high school diploma and completed two-thirds of the Deuce Program. He concedes that such completion is not noted in his Bureau case file, but argues that the Bureau maintained a faulty filing system. In essence, petitioner asks us to reweigh the evidence, which we may not do in reviewing the record for substantial evidence. The court's finding that petitioner had made minimal progress toward his reunification goals while incarcerated and subsequent to his release is amply supported by the record before us.

DISPOSITION

The order to show cause is discharged, and the petition for extraordinary writ review is denied on the merits. (Cal. Const., art. VI, § 14; rule 39.1B(*o*); *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Petitioner is barred in any subsequent appeal from making further challenges to the orders terminating reunification services and setting a .26 hearing. (§ 366.26, subd. (*l*).) Because the .26 hearing is set for October 20, 2004, our decision is immediately final as to this court. (Rule 24(b).)

SIMONS, J.

We concur.

JONES, P.J.

GEMELLO, J.